

VZCZCXRO8413  
PP RUEHAG RUEHROV RUEHSR  
DE RUEHCV #0272/01 0622141  
ZNY CCCCC ZZH  
P 032141Z MAR 09  
FM AMEMBASSY CARACAS  
TO RUEHC/SECSTATE WASHDC PRIORITY 2680  
INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY  
RUEHWH/WESTERN HEMISPHERIC AFFAIRS DIPL POSTS PRIORITY  
RHEHNSC/NSC WASHDC PRIORITY  
RUMIAAA/HQ USSOUTHCOM MIAMI FL PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 000272

SIPDIS

HQSOUTHCOM ALSO FOR POLAD  
DEPARTMENT PASS TO AID/OTI (RPORTER)

E.O. 12958: DECL: 03/03/2029  
TAGS: [PGOV](#) [KDEM](#) [PHUM](#) [VE](#)  
SUBJECT: SUPREME COURT ELECTIONS HIGHLIGHT JUDICIAL  
SUBSERVIENCE

CARACAS 00000272 001.2 OF 002

Classified By: POLITICAL COUNSELOR FRANCISCO FERNANDEZ,  
FOR REASON 1.4(D)

¶1. (C) Summary: The Venezuelan Supreme Court (TSJ) will hold internal elections March 4 to determine the president, vice-president, and a number of other posts. Current TSJ president Luisa Estella Morales is likely to be reelected to a third consecutive two-year term, arguing that the passage of President Chavez's February 15 constitutional amendment referendum supersedes legal stipulations that she cannot run for a third term. Morales' reelection bid -- bolstered by her very public and illegal support for Chavez's partisan agenda -- highlights the weakness of Venezuelan rule of law. With Chavez's near total control over public institutions, even internal TSJ affairs have become a competition to prove personal loyalty to Chavez and his "Bolivarian revolution." End Summary.

-----  
TSJ ELECTIONS ON SHAKY LEGAL GROUND  
-----

¶2. (C) Luisa Estella Morales is expected to be reelected March 4 to a third consecutive two-year term as president of the TSJ, despite highly questionable legal grounds for her reelection. According to Article 3 of the Organic Law of the TSJ, its elected officials of each chamber ("sala") are permitted to serve only two terms. However, Morales will almost certainly argue that the passage of Chavez's February 15 referendum to remove official term limits also applies to internally-elected judicial officials, although the referendum's wording does not include any mention of the TSJ. (Note: Its internal elections are regulated by the Organic Law, not the Venezuelan Constitution, which supersedes it. Morales could argue that the spirit of the constitutional amendment's passage annuls the Organic Law, despite the fact that its exact wording has yet to be determined. End Note.)

¶3. (C) The removal of TSJ term limits almost certainly will be favored by a number of other highly placed magistrates who would otherwise face similar limitations. The presidents of the Social Sala and Political-Administrative Sala, Omar Mora Diaz and Evelyn Marrero, have also served two consecutive terms and would have been ineligible to run again. According to pro-opposition daily El Nacional, several unnamed TSJ members confided that Morales waited to convoke the 2009 plenary session until after February 15 because the first issue they would have grappled with are internal elections. The justices' terms technically expired on February 7.

-----

14. (C) The TSJ is divided into six chambers: constitutional, penal, political-administrative, social, civil, and electoral. Each of these "salas" has five justices and the constitutional sala has six, for a total of 32 TSJ members. Chavez increased the size of the bench from its original 12 following the failed 2002 coup to increase his personal control over the judiciary. A scant 2 or 3 of the current 32 justices could be considered politically independent. The justices are elected by the National Assembly (AN) to twelve-year terms and can be removed by a two-thirds vote by the AN. The internal elections -- which include the presidents, vice-presidents, and secretaries of each sala and the TSJ as a whole -- are conducted by a simple majority vote among the 32 justices. The constitutional sala has the last word on appeals within the other chambers and over any issues deemed to have a constitutional element. In recent years, according to pundits, the constitutional sala has increasingly claimed that cases have constitutional bearing, giving Morales -- who is also its president -- undue authority over all major judicial issues. Most likely, it will be the chamber responsible for interpreting the vague amendment wording passed in February 15th's constitutional referendum.

MORALES LIKELY A SHOE-IN

15. (C) Although Morales does face some competition within the TSJ for a third presidential term, she can count on her proven Chavista credentials to boost her nomination. Her administration of the court is widely perceived to have

CARACAS 00000272 002.2 OF 002

accomplished little, but lawyer and human rights activist Alfredo Romero told poloffs February 27 that elected officials within the TSJ are purely political posts. He contended that the lion's share of the judicial process is actually accomplished by TSJ clerks, while the TSJ justices themselves are beholden to Chavez and play mostly a ceremonial role. In fact, during the ceremonial opening of the TSJ's 2009 session January 27, Morales' speech opened with a partisan call to arms in favor of Chavez's amendment proposal and issues unrelated to the judiciary, including a mention of the Simon Bolivar satellite which received strong applause from the Chavista audience. (Note: The constitution and the Organic Law of the TSJ both explicitly prohibit displays of partisanship from magistrates. End Note.)

16. (C) The competition for the TSJ presidency is widely expected to be between Morales and Yris Pena, and possibly Francisco Carrasquero. Pena, who is currently president of the Civil Chamber, is from Barinas State and is rumored to have the support of Chavez's mother, Elena, for her bid. She also has a reputation for team work. Probably in an effort to offset Pena's connections, Morales went to Barinas State to preside over the opening of the state's 2009 judicial session and invited Chavez's family, including his brother Adan, who is Governor, and both of his parents. At the event, Morales berated opponents of the February 15 referendum and lauded the Venezuelan President's efforts to "expand political rights." Carrasquero, who is vice-president of the Constitutional Chamber, served as the president of the National Electoral Council (CNE) during the failed 2004 presidential recall referendum. He almost certainly played a pivotal role in allowing repeated delays and other obstacles to the opposition's efforts to remove Chavez.

COMMENT

17. (C) Whatever the outcome of the TSJ elections, it almost certainly will remain a rubber stamp for Chavez's "Bolivarian revolution." The justices' jobs are secure only so long as they support his agenda, as the Chavista-dominated AN at any time can force the removal of a wayward magistrate. The legally questionable reelection of TSJ president Luisa Estella Morales will underscore the sheer lack of judicial independence and mark yet another setback for democracy and rule of law in Venezuela. End Comment.

GENNATIEMPO